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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/740,263

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Keith Barraclough

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EXAMINER

VAN HANDEL, MICHAEL P

ART UNIT

PAPER NUMBER

2424

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DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 09/740,263</p>	<p>Applicant(s) BARRACLOUGH ET AL.</p>	
	<p>Examiner MICHAEL VAN HANDEL</p>	<p>Art Unit 2424</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 12 October 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Joseph G Ustaris/
Primary Examiner, Art Unit 2424

Continuation of 11:

Regarding claims 3 and 5, the applicant argues that the examiner relies on the Edson reference without specifying a particular citation. The examiner respectfully disagrees. The examiner addresses the Edson reference on p. 29-30 of the Office Action mailed 8/12/2009. The examiner noted the following:

Edson discloses a gateway providing an open software interface to control in-home communications and to enable in-home devices of various divergent technologies to selectively access external communications features (see Abstract). The gateway converts between different external communications mediums and common in-home communications mediums to provide data over the same bus to telephones, computers, appliances, alarm systems, and video and audio entertainment systems within a unified home network (col. 4, l. 35-41 & Figs. 1, 2). Edson further discloses that the common in-home bus is a twisted pair bus (Fig. 1), and that the gateway includes a packet-switch router for routing the data to the appropriate device over the twisted pair bus (col. 8, l. 22-31; col. 9, l. 51-63; col. 10, 4-6, 66-67; & col. 11, l. 1-2, 46-65).

As such, the examiner notes that relevant particular citations were referenced in the Office Action mailed 8/12/2009.

Regarding claims 1, 46, 55, and 65, the applicant argues that all of the rejections are improper, because they rely on a misinterpretation of frequency-based communication channels as corresponding to frequency-based data configuration, the former of which is simply to ensure that the right data gets to the right place and the latter of which (as claimed) actually involves reconfiguring the data for use at a particular device. As noted in the Office Action mailed 8/12/2009, Hamlin discloses a home 12 that receives mass media signals 22 from outside the home by way of a variety of mediums, including television 24 26 30 and telephone 37 lines, amongst others (col. 2, l. 58-67; col. 3, l. 1-2; & Fig. 1). The distinct input media signals 22 are received by a converter 34, where the media signals 22 of various signal types are converted and transmitted along a communication bus 36 throughout the house 12. Hamlin further discloses converting mass media signals having different formats using a single, pre-existing network (col. 1, l. 5-8 & col. 2, l. 58-67). The user uses a remote controller 42 to direct any mass media signal to be converted, given a pod address, and distributed to any room in the house (col. 5, l. 46-50). The appropriate interface pod 44 receives the common-bus signal, interprets the pod address, and if the pod address matches that of the receiving pod interface, the interface pod converts and distributes the signal to its connected device (col. 4, l. 34-50). Since Hamlin discloses performing protocol conversion and/or demodulation on a received signal in order to produce signals in a common format, and further discloses addressing the receiving pod, the examiner maintains that Hamlin teaches configuring data for use at an end device, as currently claimed. The examiner acknowledges Applicant's argument that the frequency-based communication in Hamlin involves communicating different data streams over different frequencies so that end devices can listen on a desired frequency; however, this does have a bearing upon the ability of the end devices to actually use the data, since they listen for that particular frequency and ignore other frequencies (col. 4, l. 34-50). The applicant further argues that the examiner erroneously asserts that the frequency conversion is necessary for the interface pod and corresponding end device to receive the content and that the communication frequency is irrelevant to the respective end device's ability to process the received data. The examiner respectfully disagrees. Within the structure of Hamlin, the frequency conversion is necessary for the interface pod to receive and process the content, because it listens for that particular frequency and ignores other frequencies (col. 4, l. 34-50).

Regarding claims 46, 55, and 65, the applicant argues that the cited frequency conversion of Hamlin has no bearing upon the claimed configuration to a processor-readable format amenable to use at a particular end device, or to configuring data between executable formats. The examiner respectfully disagrees. As noted in the Office Action mailed 8/12/2009, the frequency conversion and pod addressing is necessary for the interface pod and corresponding end device to receive the content. Hamlin further discloses that the interface pod transfers the converted frequency in a compatible format to the receiving unit (col. 6, l. 63-65). Whether it is converted back in the original format is unclear; however, the examiner finds this to be irrelevant, because the demodulation and protocol conversion of the data is necessary for it to be received by the end device. This appears to be consistent with Applicant's specification as well, which indicates that configuring the external-services data may include routing the data to a particular one of the plurality of appliances, or converting the data from a first form to a second form (p. 2, 3, paragraph 21 of published application US 2002/0054601). Applicant's specification also indicates that an appliance interface device is coupled between the appliance and the bussing arrangement and adapted to exchange data between the bussing arrangement and the appliance (p. 3, paragraph 27 of Applicant's specification).

Further regarding claims 1, 46, 55, and 65, the applicant argues that the examiner's comments at page 4 of the Office Action mailed 8/12/2009 regarding Hamlin's use of non-packet-based data are not germane to Applicant's traversals, because these traversals do not assert that the Hamlin reference does not communicate frequency-converted signals in a non-packet-based format, but rather that Hamlin does not alter the format of data from a first format into a different non-packet-based format. The applicant states that Hamlin reference simply changes the frequency medium over which the data is communicated and does not alter the format of the data itself. The examiner respectfully disagrees. Hamlin discloses that the converter 34 receives different types of signals and performs protocol conversion and/or demodulation necessary to produce signals in a common format, but of different frequencies (col. 3, l. 24-37). The examiner maintains that this protocol conversion and/or demodulation alters the format of the data and that this meets the claim language, as currently claimed.

Regarding claims 2 and 4, the applicant argues that the Hamlin reference is not concerned with any processor-readable format. The examiner respectfully disagrees. Applicant specifically argues that the Office Action mailed 8/12/2009 fails to mention anything about configuring external services data into a different processing format AND a different communications format. The examiner respectfully disagrees for the reasons stated above with respect to claims 46, 55, and 65. Furthermore, the examiner notes neither claim 1 or 2 recite a communications format and further do not distinguish between a processing format and a communications format.

Further regarding the claims, the applicant argues that Hamlin fails to disclose or even contemplate various aspects of the claimed invention as a whole, including aspects regarding frequency-translating signals for application-specific use at an end device. The examiner respectfully disagrees for the reasons stated above with respect to claims 1, 46, 55, and 65.

Still further regarding the claims, the applicant argues that the rejections are improper, because they are based upon a misinterpretation of the 2007 KSR decision in effectively asserting an obvious to try argument that contradicts the KSR decision and more-recent (2009) law that clarifies the obviousness standard set forth in KSR. The examiner respectfully disagrees. Firstly, the examiner did not rely on an "obvious to try" rationale in the rejection, but on a teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill in the art to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention. The applicant further specifically argues that there is nothing in the record that establishes that the Hamlin reference would be modified to operate in accordance with configured data as claimed and further argues that Hamlin teaches away from modifying data as claimed, as it does not appear that the respective end devices could process data configured into a different format. The examiner respectfully disagrees. In each of the combinations set forth in the Office Action mailed 8/12/2009, the examiner has set forth the rationale for why one of ordinary skill in the art at the time that the invention was made would have been motivated to make the suggested combination. Furthermore, the BPAI has affirmed the examiner's position that one of ordinary skill in the art would recognize that replacing multiple pieces of equipment with a client-server arrangement would result in a significant reduction in cost and complexity of Hamlin's system. The BPAI also affirmed the examiner's position that one of ordinary skill in the art would have recognized the benefit of modifying the remote controller of Hamlin to use a security code in order to allow for tighter security and use by only authorized users. The BPAI also affirmed the examiner's position that one of ordinary skill in the art would have recognized the benefit of using DTMF tones in order to allow for remote controllable processing and programming within the system using pre-existing DTMF functionality. The BPAI also affirmed the examiner's position that one of ordinary skill in the art would have recognized the benefit of modifying Hamlin to provide a comprehensive and consistent facility for distributing information to a variety of home appliances. The BPAI also affirmed the examiner's position that one of ordinary skill in the art would have recognized the benefit of modifying the combination of Hamlin and Ellis et al. to include sending pay per view data to the television equipment of a requesting room. Regarding claims 3 and 5, the examiner maintains that it would have been obvious to one of ordinary skill in the art at the time that the invention was made to modify the converter and local network of Hamlin and Ellis et al. to include a router for packet-switching data over a twisted pair bus, such as that taught by Edson in order to provide a simple common interface usable by a wide range of systems and appliances within premises (Edson et al. col. 2, l. 64-66).

As far as teaching away, the examiner fails to find any disclosure in any of the cited references suggesting against the combinations. Applicant argues that the proposed modification of the Hamlin reference to reconfigure data being sent into a different format would render the reference inoperable, because the end devices remain compatible with the received signals, which are simply routed on a particular communication frequency. The applicant further argues that the Office Action provides no explanation as to how configuring the television signal to a different format would provide a signal usable by the VCR. The examiner first notes, as noted above, that the Hamlin reference teaches reconfiguring data into a different format. As far as the combination with the Edson reference, Edson discloses a structure very similar to the structure of Hamlin, but using instead a twisted pair bus and a packet-switch router (col. 8, l. 22-31; col. 9, l. 51-63; col. 10, l. 4-6, 66-67; & col. 11, l. 1-2, 46-65). The examiner fails to see how either reference teaches away from this combination.

Regarding the rejection of claim 3 under 35 USC 112, first paragraph, the applicant argues that the rejection is an erroneous attempt to require that the specification disclose word-for-word correspondence, contrary to MPEP 2163. The applicant specifically argues that the specification describes multiple example embodiments involving a configuration that is not frequency based, such as by "converting the data from a first form to a second form, such as from analog to digital or packet-based to non-packet-based," and that converting data from analog to digital or from packet-based to non-packet-based are clear examples of non-frequency-based data conversion. The examiner respectfully disagrees. Despite the fact that the subject matter of the claim need not be described literally in order for the disclosure to satisfy the description requirement, the fundamental factual inquiry is whether the specification conveys with reasonable clarity to those skilled in the art that, as of the filing date sought, applicant was in possession of the invention now claimed. See MPEP 2163.01. Here, the specification never indicates any non-frequency-based conversion. Despite the fact that analog to digital or packet-based to non-packet-based is disclosed, there may still be frequency-based conversion taking place without explicit disclosure stating it is not taking place. In fact, the following paragraph of Applicant's published specification (paragraph 22 of published application US 2002/0054601) states that the information is provided by the packet-based system to selected channels of the first user-based system (paragraph 22). The examiner maintains that the specification fails to provide support for the recited claim language, as currently claimed.

Regarding the rejection of claim 5 under 35 USC 112, first paragraph, the applicant argues that the rejection is based upon the assertion that the specification does not recite communicating data in a packetized format including a packet header that identifies a destination packet-based address, but that the specification clearly recites packet-based busses such as a user bus. The examiner respectfully disagrees. The section of the specification cited by the applicant states that Internet data can be received over a coaxial cable, but fails to recite communicating data in a packetized format including a packet header. The system could just as easily work by converting the Internet data to a format not containing a packet header prior to sending the data over the coaxial network. As such, the examiner maintains that the specification fails to provide support for the recited claim language, as currently claimed.

Applicant resubmits arguments from Applicant's previous response. The examiner respectfully disagrees with Applicant's arguments for the reasons set forth in the Office Actions of record.